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DA 95-348

Before the
DISPATCHED BY
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Petition of the Connecticut Department of) PR Docket No. 94-106
Public Utility Control to Retain Its Rate)
Regulatory Control of the Rates of)
Wholesale Cellular Service Providers in)
the State of Connecticut)

ORDER

Adopted: February 23, 1995 ; **Released:** February 24, 1995

By the Chief, Wireless Telecommunications Bureau:

1. On February 9, 1995, the Wireless Telecommunications Bureau ("the Bureau") adopted and released the *Second Confidentiality Order* in this proceeding, which determined, *inter alia*, the confidential treatment that would be accorded to documents submitted January 20, 1995 by the State of Connecticut Department of Public Utility Control ("DPUC filing").¹ In that Order, we decided to publicly disclose those parts of the DPUC filing that were not subject to a request for confidential treatment.² We also decided to make limited disclosure, under the terms of the protective order adopted for Connecticut in Appendix B of the *First Confidentiality Order*,³ of those parts of the DPUC filing that were accorded confidential treatment in the Connecticut cellular investigation. We decided that those parts of the filing that we listed in Section 3 of Appendix A to the *Second Confidentiality Order*, however, would not be considered by the Commission because the DPUC filing did not identify which

¹ See Order, PR Docket Nos. 94-103, 94-105, 94-106, 94-108, DA 95-208, released Feb. 9, 1995 (*Second Confidentiality Order*).

² See *Second Confidentiality Order*, para. 16.

³ See Order, PR Docket Nos. 94-103, 94-105, 94-106, 94-108, DA 95-111, released Jan. 25, 1995 (*First Confidentiality Order*).

of these materials were allegedly deserving of confidential treatment, nor describe reasons for their confidential treatment.⁴

2. On February 16, 1995, the Bell Atlantic Metro Mobile Companies ("BAMM") and the Connecticut Cellular Resellers Coalition ("Resellers") filed applications for review of the *Second Confidentiality Order*, contending, *inter alia*, that the Bureau should not have deleted from the record of this proceeding certain documents submitted in support of the DPUC petition.⁵ The parties appear to take conflicting views as to the impact of our action. Each one implies that it is harmed by our action, to the benefit of the other.⁶ Moreover, BAMM argues that the Bureau should not have included any portion of the DPUC filing in the record of this proceeding, and our decisions as to which materials to include or exclude were arbitrary and capricious.⁷ BAMM contends that materials were, in fact, rejected where they "cannot be found to advance the DPUC's arguments."⁸ The Resellers argue that the Bureau should have included in the record of this proceeding all of the documents listed in Section 3 of Appendix A to the *Second Confidentiality Order*, and that such materials should be considered by the Commission and disclosed to parties subject to the terms of the Protective Order adopted for other Connecticut materials.⁹ They assert that excluding only selected materials from the record of this proceeding, particularly the Resellers' Brief in DPUC Docket No. 94-03-27, would adversely affect the Commission's ability to consider the entire record as it addresses the merits of the DPUC Petition to retain regulatory authority.¹⁰

3. The Commission will act on these applications for review at some later time, pursuant to its rules.¹¹ On our own motion and authority, however, we reconsider *sua sponte* our decision to exclude from the record certain of the Connecticut materials,¹² and we will instead enter them in the record and make limited disclosure of the materials only to outside counsel and outside experts for parties to this proceeding, pursuant to the protective order

⁴ See *Second Confidentiality Order*, paras. 14-16.

⁵ See BAMM, Application for Review, PR Docket No. 94-106, filed Feb. 16, 1995, at 6-7 ("BAMM Petition"); Resellers, Application for Review, PR Docket No. 94-106, filed Feb. 16, 1995, at 1-2, 6-7 ("Resellers' Petition").

⁶ See *id.*

⁷ See BAMM Petition, at 7.

⁸ *Id.*

⁹ See Resellers' Petition, at 1-2.

¹⁰ *Id.* at 6-7.

¹¹ See Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115.

¹² See 47 C.F.R. § 1.113(a).

which we adopted for purposes of this proceeding in the *First Confidentiality Order*.¹³ We take this action to expedite this proceeding, which is subject to a statutory deadline set forth in Section 332(c)(3)(B) of the Communications Act, 47 U.S.C. § 332(c)(3)(B). As the materials will be made available only to outside counsel and outside experts for parties, pursuant to the terms of a protective order, no party will be harmed by our action.

4. This Order is effective March 3, 1995, with respect to materials submitted by the DPUC on January 20, 1995, and determined herein, *supra* para. 3, to warrant disclosure subject to protective order. This action provides an opportunity to seek review of our decision herein respecting the treatment of these materials.

5. The *Second Confidentiality Order* established a pleading cycle for comment on the DPUC filing materials discussed therein, with comments due no later than February 24, 1995, and replies due no later than March 3, 1995.¹⁴ We hereby defer that pleading cycle for two weeks.

6. Accordingly, IT IS ORDERED that the *Second Confidentiality Order*, *supra* n.1, is reconsidered on our own motion to the extent discussed herein.

7. IT IS FURTHER ORDERED that the materials listed in Section 3 of Appendix A of the *Second Confidentiality Order* SHALL BE DISCLOSED beginning March 6, 1995, to outside counsel and outside experts for parties, provided that such counsel and/or experts have filed in this docket an executed copy of the protective order attached as Appendix B of the *First Confidentiality Order* with the Commission's Secretary.

8. IT IS FURTHER ORDERED that this Order is effective March 3, 1995, with respect to materials submitted by the DPUC on January 20, 1995, and determined herein, *supra* para. 3, to warrant disclosure subject to protective order.

¹³ That protective Order is appended to the *First Confidentiality Order* as Appendix B.

¹⁴ See *Second Confidentiality Order*, para. 42.

9. IT IS FURTHER ORDERED that the schedule for comments and replies on the materials submitted January 20, 1995 by the State of Connecticut, established in the *Second Confidentiality Order*, IS EXTENDED BY TWO WEEKS in accordance with paragraph 5 of this Order. Any Comments on such materials, including those affected by this order, are due no later than March 10, 1995, and any replies are due no later than March 17, 1995.

FEDERAL COMMUNICATIONS COMMISSION


Regina M. Keeney
Chief, Wireless Telecommunications Bureau